S.B.Civil Writ Petition NO.710/2005

M/s. Mohinudin Art Handicrafts

vs

The Bank of Rajasthan Ltd & Ors.

DATE OF ORDER : - 4.2.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr. U.S.Gehlot, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order dated 29.1.2005 by which the trial court rejected the petitioner's application dated 24.1.2004 filed under Order 14 Rule 5 CPC wherein the petitioner prayed that the burden of some issues has been wrongly placed upon the defendant and in view of the plea taken in the written statement, the issue about the interest should have been framed by the court and further in view of the plea taken in para no.8 of the written statement, the issue about the mortgage should have been framed. The trial court in its impugned order observed that the defendant failed to produce evidence despite the opportunity was granted by the High Court and the case was adjourned on payment of cost of Rs.2,000/-. The cost was not

paid by the petitioner, therefore, in view of the above, the petitioner's witnesses' attendence cannot be marked as he has not complied with the order of the court.

Learned counsel for the petitioner relied upon the judgments of this court delivered in the case of Girraj Prasad & Ors Vs. Mirari Lal & Anr reported in RLW 1996(2) Raj 569 wherein this court on finding that the issue was necessary, directed the trial court to frame the additional issue and learned counsel for the petitioner further relied upon the judgment of this court delivered in Jaipur Udyog Ltd. Vs. Appellate Authority for Industrial & Financial Reconstruction, New Delhi & Ors reported in RLW 2005(1) Raj. 131 wherein while considering the scope of the principles of natural justice in a writ petition, this court observed that passing order without hearing other side is against the principle of natural justice. According to learned counsel for the petitioner, the court has fixed the date for final decision of the suit and denied the opportunity of hearing to the petitioner.

I considered the submissions of learned counsel for the petitioner and perused the judgments relied upon by learned counsel for the petitioner. Those above judgments have no application to the facts of the case in view of the fact that petitioner sought permission of marking attendance of his witnesses despite the fact that his evidence was

closed after full opportunity to the petitioner and the petitioner despite the orders of the court did not pay the cost of Rs.2,000/- to the plaintiff. The trial court also held that in the facts and circumstances of this case that the application filed by the petitioner dated 24.1.2005 has been filed without any rhyme and reason.

Apart from it, it is clear that the petitioner did not choose to file the application in time and when he lost all his opportunities to lead the evidence, he submitted application for amendment of the issue. In these circumstances, the petitioner is not entitled to approach this court under Article 227 of the Constitution of India looking to the conduct of the petitioner himself.

In view of the above, the writ petition of the petitioner is dismissed having no merit.

(Prakash Tatia), J.

c.p.goyal/-